

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

Criminal No. 4:09-cr-074-GHD-DAS-2;

Civil No. 4:15-cv-137-GHD

GREGORY HOST

ORDER DENYING DEFENDANT GREGORY HOST'S MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE

Defendant Gregory Host has moved this Court to vacate, set aside, or correct his sentence [Doc. No. 83] pursuant to 28 U.S.C. § 2255. Having considered the matter, the court finds the motion should be denied.

On August 26, 2011, Host pleaded guilty to aiding and abetting the distribution of cocaine under 18 U.S.C. § 846(a) and (b)(1)(A). After finding that he was a career offender under U.S.S.G. §§ 4B1.1. and 4B1.2, Host was sentenced to 204 months' imprisonment.

In this motion, Host argues that under the United States Supreme Court's holding in *Johnson v. United States*, ___ U.S. ___, 135 S. Ct. 2551, 192 L.Ed.2d (2015p), his two prior convictions for manslaughter and aggravated assault no longer constitute crimes of violence under U.S.S.G. § 4B1.2, and therefore he is not a career offender under § 4B1.1. Therefore, he argues, his sentence should be vacated and he should be resentenced without the career offender sentencing enhancement.

U.S.S.G. § 4B1.1 establishes a greater offense level for "career offenders" who, among other criteria, have "at least two prior felony convictions of either a crime of violence or a controlled substance offense." At the time of Host's conviction § 4B1.2 defined "crime of violence" as :

any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that--

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another..

U.S.S.G. § 4B1.2(a)(2010).

In *Johnson*, the United States Supreme Court held that the residual clause of the Armed Career Criminal Act, which defined “violent felony” to include an offense that “involves conduct that presents a serious potential risk of physical injury to another,” 18 U.S.C. § 924(e)(2)(B)(ii)(2012), was unconstitutionally vague. *Johnson*, 135 S. Ct. at 2563. Host argues that under *Johnson*, U.S.S.G § 4B1.2(a)(2) which uses identical language to define “crime of violence” is also unconstitutionally vague.

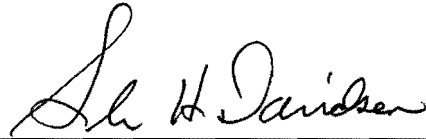
However in *Beckles v. United States*, ___ U.S. ___, 137 S. Ct. 886, 197 L.Ed.2d 145 (2017), the Supreme Court, considering whether § 4B1.2’s residual clause was impermissibly vague, held that “the Guidelines are not subject to a vagueness challenge under the Due Process Clause.” *Beckles*, 137 S. Ct. at 895. Accordingly, “the residual clause in § 4B1.2(a)(2) is not void for vagueness.” *Id.*

Because § 4B1.2’s residual clause is constitutionally permissible, there was no error in finding that his prior offenses constituted crimes of violence under § 4B1.2, and therefore, he was appropriately considered a career offender under § 4B1.1.

Accordingly, the Court finds that Hosts’s claims are without merit. The Court **ORDERS** that Host’s motion to vacate, set aside, or correct his sentence [Doc. No. 83] is **DENIED**, and civil

case no. 4:15-cv-137 is **CLOSED**.

SO ORDERED, this, the 29th day of January, 2018.

A handwritten signature in cursive script, appearing to read "L. H. Tardien", written in black ink.

SENIOR U.S. DISTRICT JUDGE